

REMARKS/ARGUMENTS

In the Notice of Non-Compliant Amendment mailed July 7, 2009, the Examiner states that Applicants' response filed on June 26, 2008, was deemed non-compliant because Mark A. Wilson, Reg. No. 43,994, does not appear to have authorization to prosecute the present application. In particular, the patent practitioner was not declared in any filing of Power of Attorney document(s).

Applicants respectfully submit that the Notice of Non-Compliant Amendment is improper because a record of power of attorney is not required for the filing of a response to an Office Action. Although 37 C.F.R. § 1.32 sets forth the rules for acting in a representative capacity under a power of attorney, § 1.34 sets forth the rules pertaining to a patent practitioner who acts in a representative capacity without a recorded power of attorney. In particular, § 1.34 states:

When a patent practitioner acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party on whose behalf he or she acts. In filing such a paper, the patent practitioner must set forth his or her registration number, his or her name and signature.
(Emphasis added.)

Moreover, MPEP § 402 states:

In accordance with 37 CFR 1.34, a paper filed by a registered patent attorney or agent in an application in which he or she is not of record must include his or her name and registration number with his or her signature. Acceptance of papers filed in patent applications and reexamination proceedings by registered attorneys and agents upon a representation that the attorney or agent is authorized to act in a representative capacity is for the purpose of facilitating replies on behalf of applicants in patent applications and, further, to obviate the need for filing powers of attorney in individual applications or patents when there has been a change in composition of law firms or corporate patent staffs.
(Emphasis added.)

Thus, the rules and the MPEP recognize that the UPSTO may accept papers filed by a registered attorney upon representation that the attorney is authorized to act a representative capacity. The attorney's signature constitutes such representation, as long as the attorney provides his name, registration number, and signature. While § 402 lists five types of submissions that cannot be filed by a person acting in a representative capacity without a recorded power of attorney, those submissions do not include a response to an Office Action or a Petition to Revive. The granting of the Petition to Revive is evidence in the present application that a recorded power of attorney was not required for submission of the Petition to Revive. Similarly, the response filed on June 26, 2008, should also be received on the same basis of representation provided by the name, registration number, and signature of Mark A. Wilson included in that response.

Therefore, since the submission of response to an Office Action does not require a recorded power of attorney, and the Applicants' response filed on June 26, 2008, meets the requirements of representation, Applicants submit that the response filed on June 26, 2008, is compliant. Accordingly, Applicants respectfully request that the Notice of Non-Compliance mailed on July 7, 2009, be reconsidered and withdrawn.

CONCLUSION

Applicants respectfully request reconsideration of the claims in view of the amendments and remarks submitted in the response filed on June 26, 2008. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

/mark a. wilson/

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Mark A. Wilson
Reg. No. 43,994

Wilson & Ham
PMB: 348
2530 Berryessa Road
San Jose, CA 95132
Phone: (925) 249-1300
Fax: (925) 249-0111